

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOSE ROSARIO)	Case No. 1:12-cv-04059-ALC-DCF
)	
Plaintiff,)	PLAINTIFF’S REPLY IN SUPPORT
)	OF HIS MOTION TO DISMISS
vs.)	DEFENDANT’S COUNTERCLAIM
)	
INTERNATIONAL AUTO MALL &)	
LEASING CENTER, INC.)	
)	
Defendant.)	
)	

Plaintiff, Jose Rosario (“Plaintiff”), by and through his undersigned counsel, submits his reply in support of his motion to dismiss Defendant’s, International Auto Mall & Leasing Center, Inc.’s (“Defendant”), counterclaim for lack of subject matter jurisdiction. In support thereof, Plaintiff respectfully states as follows:

I. THIS COURT SHOULD CONSIDER PLAINTIFF’S MOTION TO DISMISS AS UNOPPOSED BECAUSE DEFENDANT FAILED TO FILE A TIMELY OPPOSITION.

Local Rule 6.1(b) provides that “any opposing affidavits and answering memoranda shall be served with fourteen days after service of the moving papers.” Local Civil Rule 6.4(b). Here, Plaintiff filed and electronically served Defendant with his motion to dismiss the counterclaim on August 21, 2012. (Doc. 6). Defendant submitted its opposition on October 5, 2012, forty-five (45) days after Plaintiff filed its motion to dismiss. (Doc. 11). Accordingly, Defendant’s opposition is exceptionally late, and this Court should consider Plaintiff’s motion to dismiss as unopposed. Local Civil Rule 6.4(b).

II. NEVERTHELESS, DEFENDANT'S OPPOSITION FAILS TO ADEQUATELY REBUT THE ARGUMENTS RAISED IN PLAINTIFF'S MOTION TO DISMISS.

Defendant's opposition is legally deficient. Defendant fails to cite any legal authority to support a finding that this Court has subject matter jurisdiction over Defendant's debt collection counterclaim or that this Court should exercise supplemental jurisdiction. (*See* Doc. 11). Rather, Defendant uses unsupported conclusory statements and speculation to support its opposition. (*See* Doc. 11).

Plaintiff, on the other hand, sufficiently briefed the issue of supplemental jurisdiction in his motion to dismiss. (*See* Doc. 6). In the interest of judicial economy, Plaintiff will not repeat those arguments here.

WHEREFORE, Plaintiff respectfully requests that this Court dismiss Defendant's counterclaim.

Respectfully submitted this 12th day of October 2012.

ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2012, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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Respectfully submitted,

/s/ Jeanne Lahiff
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